

In the Matter of Merchant Mariner's Document No. Z-112582 and all other Seaman Documents  
Issued to: JOHN Y. CHURCH

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1268

JOHN Y. CHURCH

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 18 November 1960, an Examiner of the United States Coast Guard at New York, New York suspended, on probation, Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as Chief Crew Cook on board the United States SS UNITED STATES under authority of the document above described, on 13 September 1960, Appellant wrongfully slapped crew messman Lester Thompson.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of messman Thompson and another crew member. Two witnesses appeared in Appellant's behalf. Appellant testified that he was cut in the face with a drinking glass by Thompson before Appellant grabbed Thompson and slapped him.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of two months on eight months' probation.

On 18 January 1961, the Examiner granted Appellant's application to reopen the hearing in order to receive evidence that Appellant had previously agreed to furnish the Customs authorities with information as to narcotics activities on the UNITED STATES; Appellant knew Thompson was a user of marijuana; Thompson's knowledge of these matters is the reason why he cut Appellant with the glass on 13 September. After considering this additional evidence, the Examiner affirmed his decision of 18 November 1960.

FINDINGS OF FACT

On 13 September 1960, Appellant was serving as Chief Crew Cook on board the United States SS UNITED STATES and acting under authority of his document while the ship was in the

port of New York City.

The breakfast period ended at 0830 on this date. At 0825, an electrician entered the messroom and messman Lester Thompson took the order. When Thompson went to the nearby galley to fill the order, Appellant remarked that there were only five minutes more for breakfast. Thompson served the electrician and Appellant followed Thompson as far as the doorway to the messroom. Since there were no cups in the messroom, Thompson picked up a water glass to get coffee for the electrician from the pantry across the passageway from the messroom. As Thompson was leaving the messroom, he saw Appellant and told him that the electrician was the man that Thompson was serving. Appellant addressed Thompson with vulgar language, grabbed him and slapped him with a hard blow in the face. Appellant then pushed Thompson against a bulkhead. As Thompson raised his arms and ducked to protect himself from further blows, the glass in his left hand was broken in some undetermined manner and Appellant was cut on the right side of his face. Thompson's left hand was also cut. Since Appellant is a much larger man than Thompson, two other men held him away from Thompson. Appellant has no prior record.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Examiner's decision is contrary to the weight of the credible, reliable, probative and substantial evidence. The decision is based on surmise, speculation and feeling rather than on the evidence in the record.

APPEARANCE ON APPEAL: Joseph Friedberg, Esquire, of New York City, of Counsel

#### OPINION

The Examiner concluded that the alleged offense was proved because Thompson made a good impression as to credibility. As a result, the Examiner accepted Thompson's version of the incident. Except for Appellant, the testimony of the other witnesses was indefinite as to whether Appellant was cut before he slapped Thompson.

The record is not clear concerning the reason for the remark made by Thompson when he was going to get coffee for the electrician. There is some indication that it might have been because Appellant was perturbed about someone eating breakfast so late or because there had been some prior difficulty when stevedores were served meals on the ship. In any event, Appellant's anger is indicated by the admission in his testimony that he did address Thompson with vulgar language just before the slapping and cutting took place. It is logical to infer that the slapping was also a result of this anger.

The Examiner rejected Appellant's testimony that he was cut with the glass prior to slapping Thompson. The evidence submitted at the reopened hearing, that Appellant was a voluntary narcotics informer and that he knew Thompson used marijuana, is not considered to be significant. The attempt, by the use of this evidence, to establish a motive for Thompson to cut Appellant is practically

nullified by the fact that there is testimony by a Customs Agent to show that Appellant did not report Thompson to the Customs authorities.

Since there is no sound basis for reversing these findings as to credibility which were arrived at by the trier of the facts who saw and heard the witnesses, I do not think that the contentions raised on appeal, which are all of a general nature, are supported by the record.

ORDER

The order of the Examiner dated at New York, New York, on 18 November 1960, is AFFIRMED.

J.A. Hirshfield  
Vice Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D.C., this 9th day of November 1961.